



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date:	07/01/14	Bill No:	Senate Bill 1319
Tax Program:	Oil Spill Prevention and Administration Fee	Author:	Pavley
Sponsor:	Author	Code Sections:	GC 8670.40
Related Bills:	SB 861 (Budget)	Effective Date:	01/01/15

This analysis is limited to the provisions which impact the Board of Equalization (BOE).

BILL SUMMARY

Among its provisions, this bill amends the **oil spill prevention and administration fee** (prevention fee) program to delete the \$0.065 fee rate cap as of January 1, 2015, so that the fee would be annually determined by the Administrator to pay the reasonable regulatory costs.

Summary of Amendments

Since the previous analysis, this bill was amended to delete the \$0.065 prevention fee rate cap as of January 1, 2015, recently enacted by SB 861.¹

ANALYSIS

CURRENT LAW

Oil Spill Prevention and Administration Fee. Existing law² imposes a prevention fee based on each barrel of crude oil received from within or outside the state, or petroleum products received from outside the state at a marine terminal by any mode of delivery. That mode of delivery must have passed over, across, under, or through waters of the state. Marine terminal operators collect the fee from the owner of the crude oil or petroleum products, based on each barrel of crude oil received from within or outside the state, or petroleum products received from outside the state at a marine terminal by any mode of delivery that has passed over, across, under, or through waters of the state.

The current fee rate cap is:

Rate Period	Rate Cap
01/01/12 – 09/17/14 ³	\$0.065
09/18/14 – ongoing	\$0.065

Additionally, the prevention fee is imposed on the owner of crude oil or petroleum products at the time it is received at a refinery within the state by any mode of delivery that has passed over, across, under, or through waters of the state, whether from within or outside the state.

¹ SB 861, Ch. 35, Stats. 2014, effective June 20, 2014, but the amendments to the prevention fee are operative September 19, 2014.

² Government Code (GC) Section 8670.40. This analysis discusses this bill's proposed changes from current law, as enacted recently by SB 861. See [BOE analysis of SB 861](#) for statutory changes enacted by that bill.

³ The cap was scheduled to lower to \$0.05 on January 1, 2015, before the enactment of SB 861.

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There is a rebuttable presumption that crude oil or petroleum products received at a marine terminal or refinery has passed over, across, under, or through waters of the state. The presumption may be overcome by the marine terminal or refinery operator, or the owner of the crude oil or petroleum products by providing evidence to rebut the presumption.

Although the BOE handles and decides petitions for redetermination and claims for refund, the BOE shall not decide petitions for redetermination or claims for refund that challenge the rebuttable presumption. The BOE would be required to forward such petitions or claims to the Administrator for a decision.

The refinery, marine terminal, and pipeline operators must register with the BOE, consistent with the current prevention fee law.⁴

As a Governor's appointee in the Department of Fish and Wildlife, the Administrator annually sets the fee rate. The Administrator is required to prepare a plan that projects revenues and expenses over three fiscal years. The fee amount is set so that the projected revenue will meet current and proposed state budget needs. The Administrator may also allow for a surplus if revenues will not be adequate to meet contingencies and shortfalls.

The owner of the crude oil or petroleum products, the marine terminal operator, or the refinery operator pays the fee monthly to the BOE. The marine terminal or refinery operator does not collect the fee, or the fee is not imposed on the owner of the crude oil or petroleum products, if the fee has been previously collected or paid on the crude oil or petroleum products at another marine terminal or refinery. The marine terminal or refinery operator, or the owner of the crude oil or petroleum products, has the obligation to demonstrate that the fee has already been paid on the same crude oil or petroleum product.

Fees are deposited into the Oil Spill Prevention and Administration Fund to pay for oil spill prevention programs and studies. However, the fee does not fund oil spill response activities.

Oil Spill Response Fee.⁵ Existing law⁶ imposes a response fee, not to exceed twenty-five cents (\$0.25), upon the owner of petroleum products for each barrel of petroleum products received at a marine terminal within this state by means of a vessel from a point of origin outside this state. It is also imposed upon a pipeline operator for each barrel of petroleum product transported into the state by a pipeline operating across, under, or through waters of the state, and upon a refinery operator for each barrel of crude oil received at a refinery within the state by any method of transport. Marine terminal operators collect the fee from the owners of the petroleum product at the time the petroleum products are received at the marine terminal from a vessel that originated outside this state. Both the pipeline and refinery operator pay the fee to the BOE.

⁴ The Oil Spill Prevention and Administration Fee is administered and collected by the BOE consistent with Part 24 (commencing with Section 46001) of Division 2 of the RTC. Article 2, Section 46101 of the RTC, requires these same fee payers to register with the BOE.

⁵ In general, certain marine terminal operators, pipeline operators, and refiners pay a uniform oil spill response fee, in an amount not exceeding \$0.25 per barrel of petroleum product or crude oil. The fee is only collected when the funds in the Oil Spill Response Trust Fund (Fund) fall below the designated amount.

⁶ GC Section 8670.48

The Administrator, in consultation with the BOE sets the amount of the fee.⁷ The fee is collected when the Administrator determines collection is necessary for the following specified reasons:

- The fund amounts are less than or equal to 95% of the specified designated amount;⁸
- Additional money is required to pay for specified purposes, generally related to the costs of response and cleanup of oil spills into marine waters; or
- The revenues are necessary to repay a draw upon security or borrowed money.⁹

The Administrator, in consultation with the BOE and with the approval of the Treasurer, may direct the BOE to cease collection when it is determined that further collection is not necessary.

An additional response fee shall be imposed in any month when the total cumulative year-to-date barrels of crude oil transported outside the state by means of vessel or pipeline exceed 6% by volume the total barrels of crude oil and petroleum products subject to the fee as described above for the prior calendar year. The additional response fee is imposed on a marine terminal operator and a pipeline operator for each barrel of crude oil that is transported from within this state to a destination outside this state, either by vessel or by pipeline, respectively.¹⁰

Moreover, the Administrator has the authority¹¹ to raise the \$0.25 response fee to a maximum of one dollar (\$1.00) per barrel, provided the fee increase is in maximum increments of \$0.25 and not more frequently than once every three months. The Administrator may only raise the fee by finding all of the following:

- Demands for expenditures from the Oil Spill Response Trust Fund (Fund) have depleted or exhausted or will deplete or exhaust the Fund;
- The Governor requests that the Treasurer borrow money and the Treasurer finds that the fee is insufficient for the Treasurer to borrow enough money to meet anticipated demands on the fund, or that the fee is insufficient to repay and secure draws against the financial security obtained by the Treasurer; and
- Failure to raise the fee will result in unmet or unpaid authorized contracts or expenditures related to any borrowing or financial security.

All response fees collected are deposited in the Fund.

⁷ The Administrator shall not set the amount of the fee at less than \$0.25, unless a lower amount will cause the fund to reach its designated amount within four months. The fee may also not be less than \$0.25 if the Administrator or the Treasurer has drawn upon security or borrowed money and those borrowings remain unpaid, unless the Treasurer certifies that the funds are not necessary for specified purposes.

⁸ The designated amount, currently at \$109,750,000, is specified in RTC Section 46012. The designated amount is comprised of two components, \$54,875,000 in cash, and \$54,875,000 in financial security. Amounts held in the Fund may accumulate up to the designated amount.

⁹ GC Section 8670.48.3, specifies that, under specified conditions, the Administrator is not obligated to resume collection of the response fee if a loan or other transfer from the Fund to the General Fund reduces the balance of the Fund to less than 95% of the designated amount. In general, the specified conditions are that a loan from the Fund is required, and that the loan be repaid by June 30, 2017.

¹⁰ Generally speaking, the additional response fee takes effect when the outgoing barrels of crude oil and petroleum products exceed the incoming barrels of crude oil and petroleum products.

¹¹ GC Section 8670.48.5

PROPOSED LAW

This bill amends the prevention fee provisions to delete the \$0.065 prevention fee rate cap as of January 1, 2015, and after that date the fee would be annually determined by the Administrator to pay the reasonable regulatory costs and provide a reasonable reserve.

The current and proposed fee rate cap is:

Rate Period	Rate Cap
01/01/12 – 09/17/14	\$0.065
09/18/14 – 12/31/14	\$0.065
01/01/15 – ongoing	No cap

This bill is effective January 1, 2015.

BACKGROUND

In 1990, two bills¹² enacted the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, which added several provisions¹³ to address marine oil spill prevention, administration, and response activities in California.

In 2010, the Legislature passed Assembly Bill 234 (Huffman), which would have increased the maximum amount of the fee to \$0.06. Governor Schwarzenegger vetoed the bill.

Assembly Bill 1112 (Ch. 583, Stats. 2011) temporarily increased the fee cap from \$0.05 to \$0.065, from January 1, 2012, to January 1, 2015. Thereafter, the fee rate cap decreases to \$0.05.

On June 20, 2014, SB 861 (Ch. 35, Stats. 2014), a budget trailer bill, was enacted, which, among its provisions, extends the prevention fee to marine and inland waters of the state, including crude oil or petroleum products received at a refinery in this state.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the author and is intended to expand the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act to all waters of the state and all significant modes of oil transportation.
- 2. The July 1, 2014 amendments** delete the \$0.065 prevention fee rate cap from the statute recently enacted by SB 861, as of January 1, 2015, and after that date, the fee would be annually determined by the Administrator to pay the reasonable regulatory costs and provide a reasonable reserve. **The June 18, 2014 amendments** deleted most of the BOE-related provisions, except the oil spill prevention fee rate change. Double jointing language was also added to make the bill operative if SB 861 (Budget) is enacted and becomes operative. **The June 9, 2014 amendments** did not affect provisions related to the BOE. **The May 27, 2014 amendments** (1) deleted the prevention fee rate cap as of January 1, 2015; (2) specified that the fee is imposed on crude oil or petroleum products received at a marine terminal if the mode of delivery passed over, across, under, or through waters of the state; (3) specified that the fee is imposed on crude oil received at a

¹² Senate Bill 2040 (Chapter 1248, Keene) added and Senate Bill 7 (Chapter 10, Keene) amended GC Section 8670.40 to impose the Oil Spill Prevention and Administration Fee.

¹³ GC (§8670.1 et seq.), Public Resources Code (§8750 et seq.), and RTC (§46001 et seq.).

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refinery if the mode of delivery passed over, across, under, or through waters of the state;(4) provided RTC definitions; and (5) added budget augmentation language related to the prevention fee.

- 3. BOE does not have any administrative concerns.** As previously explained, the Administrator sets the fee rate in accordance with an annual plan. Currently, the BOE administers and collects this fee, set at the maximum of \$0.065.

The bill deletes the fee rate cap as of the bill's effective date, January 1, 2015. On and after that date, the fee rate would be annually determined by the Administrator to pay the reasonable regulatory costs and provide a reasonable reserve.

BOE staff have been working with the Administrator to implement the main changes as enacted by the budget trailer bill, SB 861. Annual rate determinations made by the Administrator would not create administrative problems for the BOE.

- 4. Related bills.** SB 861 (Ch. 35, Stats. 2014) was enacted June 20, 2014. Among the provisions, the bills extend the prevention fee to marine and inland waters of the state, including crude oil or petroleum products received at a refinery in this state.

COST ESTIMATE

BOE costs to administer this measure are absorbable in the current fiscal year. Costs would be attributable to, among other things, advising and answering inquiries from the public, and identifying and noticing affected fee payers regarding rate changes. The BOE is reimbursed for its costs, as provided in statute.

REVENUE ESTIMATE

This bill deletes the fee rate cap as of January 1, 2015. As such, there is no stated fee rate or cap, therefore the BOE is unable to estimate the revenue impact.

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